

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY


(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 28 NOV 2005

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Applicant's or agent's file reference NO 7276WO/PCT		<b>FOR FURTHER ACTION</b> See Form PCT/PEA/416	
International application No. PCT/EP2004/006106	International filing date (day/month/year) 07.06.2004	Priority date (day/month/year) 30.07.2003	
International Patent Classification (IPC) or national classification and IPC A23F5/24, A23L2/39, B65D81/00			
Applicant NESTEC S.A. et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand  14.01.2005		Date of completion of this report  24.11.2005	
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  Groh, B  Telephone No. +49 89 2399-	



**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2004/006106

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**Box No. I Basis of the report**

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1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

**Description, Pages**

1-13 as originally filed

**Claims, Numbers**

1-19 as originally filed

**Drawings, Sheets**

1/1 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2004/006106

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	1-19
	No: Claims	
Inventive step (IS)	Yes: Claims	1-19
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-19
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
REPORT ON PATENTABILITY  
(SEPARATE SHEET)**

International application No.

PCT/EP2004/006106

**Re Item V**

**Novelty**

Beverages, including coffee-beverages, with added caffeine are known in the art (see description of present application and documents of search report).

Furthermore, dry, single-serving beverage preparations, such as powdered instant beverage preparations (for example: dry sports- or refreshing drink preparations) are known in the art.

However, single serving sachets with conventional caffeine-containing coffee solids and additional caffeine containing solids, for use in preparing a liquid beverage, and as further defined in claim 1 are new over the prior art.

**Inventive step**

GB 124309 and FR 2039157 are relevant documents of the prior art. Patent specification GB 124309 is about a coffee preparation, which may be in extract form, whereto additional caffeine is added. FR 2039157 is about a canned, liquid coffee extract with added caffeine (see claims 1 - 5).

The problem to be solved can be formulated to provide an instant beverage, with an acceptable taste, which provides a high, controlled amount of caffeine.

Both prior art documents disclose coffee extracts, which are in a liquid form (see GB 124309 line 26-29). Whereas the present application specifies that coffee solids are used. Additionally, GB 124309 is silent about the form of package, which is in the present application a single-serving sachet of a rupturable material.

No document of the prior art suggests in an obvious way to provide a caffeine delivery system, based on conventional caffeine-containing coffee solids and additional caffeine-containing solids from a natural source, and further specified as in present claim 1.

Therefore novelty, inventive step and industrial applicability (that is: preparation / use of

**INTERNATIONAL PRELIMINARY  
REPORT ON PATENTABILITY  
(SEPARATE SHEET)**

International application No.

PCT/EP2004/006106

a caffeinated beverage as described in the application) are acknowledged for claim 1 and the dependent claims, including the related use-type claims (Art. 33 PCT).

Other (Art. 6 PCT)

- 1 The claims need to be renumbered (currently there are two claims with number 13 and two claims with number 16).
- 2 Claim 5 is contradictory: the claimed 'caffeine-containing solids' apparently can not be 'decaffeinated tea extracts' or 'decaffeinated coffee extracts'
- 3 The reference letters a), b), c), and 3) in claim 12 are not defined.